

March 21, 2011

**Barnet H. Kussner**  
T: 416-947-5079  
bkussner@weirfoulds.com

**VIA E-MAIL**

File 13703.00004

City Clerk's Office  
City of Toronto  
Etobicoke Civic Centre  
399 The West Mall  
Toronto, Ontario M9C 2Y2

**Attn: Rosemary MacKenzie**  
**Administrator, Etobicoke York Community Council**

Dear Ms. MacKenzie:

**Re: Public Meeting – March 22, 2011 – Etobicoke York Community Council  
Request to Amend the Official Plan, Toronto Zoning By-law 1156-2010, Former  
York Zoning By-law 1-83, and Former Toronto Zoning By-law 438-86 with respect  
to Lands in the Vicinity of St. Clair Avenue West between Scarlett Road and Keele  
Street/Weston Road**

We are counsel for Starbank Developments (1678) Corp. ("**Starbank**"), which has a long-term leasehold interest in the property located at 2133 St. Clair Avenue West (the "**Site**"). The Site is owned by Toronto Stock Yards Land Development Board.

We are in receipt of the Notice of Public Meeting respecting the above-noted matter, which is scheduled to be considered by the Etobicoke York Committee Council ("**EYCC**") at its regular meeting of March 22, 2011. We have also received and reviewed the Staff Report dated March 4, 2011 together with all of its attachments (the "**Staff Report**").

Please provide this letter to the EYCC prior to its meeting of March 22, 2011. It is intended to assist by summarizing Starbank's position in respect of the above-noted planning initiative. In addition, kindly accept this correspondence as our written request on behalf of Starbank that we be kept informed and provided with any further notice of this matter, including any Notice of Enactment/Adoption for any planning instruments related to above-noted matter.

Our client's planning concerns are summarized as follows:

1. The Site is currently improved with a number of existing large scale, stand-alone retail stores which collectively operate as part of a format commonly referred to as a "power centre". The Staff Report correctly identifies that the Site is anchored by a Metro Supermarket, but it does not appropriately reflect the fact that the commercial density is entirely distributed almost evenly over the entire Site. Additionally, Starbank has already received site plan approval for an expansion to accommodate a big box "Mark's Work Warehouse" retail store on the Site.

Attached please find a copy of our submission letter to the City dated August 18, 2010 in respect of the City's new Comprehensive Zoning By-law No. 1156-2010 (the "HCZBL") in which some of the above facts and initial concern on how the Site was proposed to be treated through the HCZBL were set out in greater detail.

2. The Starbank site is proposed to be split between two Site and Area Specific Policies (#358 and #359, respectively) under Official Plan Amendment No. 144 ("OPA No. 144"). Site and Area Specific Policy 358 applies to the front part of the Site fronting along St. Clair Avenue West which coincides with the increased development potential for a mixed use building. That contemplates the expectation of removing some of the big box retail components to the rear of the Site which falls within Site and Area Specific Policy 359 where the combination of reduced parking standards and parking structures can provide for the same commercial density and intensity, albeit in a new urban commercial built form.

In our respectful submission, this approach fails to properly recognize the long term commitment of the existing retail uses. The proposed planning changes do not properly recognize and maintain the status quo; instead, they would compromise the ongoing viability of the existing committed built-form. For example, Section (d) (iii) of Site and Area Specific Policy 358 anticipates the shift of large scale format retailers away from the St. Clair frontage towards the south end of the property. In our view, this fundamental planning shift was never considered in such a bold move. It cannot be reconciled with the public consultation process – in which intensification was certainly supported in principle, but always on the basis and understanding of protecting and enhancing the long-term viability of the existing built-form.

3. Site and Area Specific Policy 359, which applies to the southern portion of the Site, attempts to recognize the intent to continue with retail uses at any scale because no change is proposed to amend the base Official Plan. However, the fact remains that the Site would continue to be designated "Employment". That designation, along with the proposed Mixed Use Areas designation for the St. Clair Avenue West frontage, creates internal policy conflicts given the general policy prohibition against any retailing on Employment lands and, of equal or greater importance, the prohibition against large scale, stand-alone retail stores and/or "power centres" within the Mixed Use Areas designation pursuant to Section 4.5.3 of the Official Plan.
4. Further to the above, only existing large scale, stand-alone retail stores and/or "power centres" in the Mixed Use Areas designation pursuant to Section 4.5.4 of the Official Plan are protected. Since the Starbank development is proposed to be placed into two different designations, this policy would not afford any protection to the Site as a whole. In our respectful view, the entire Site should be brought into the Mixed Use Areas designation and specific wording should be incorporated within both Site and Area Specific Policies 358 and 359 that would override both Section 4.5.3 and 4.5.4 of the Official Plan.
5. In our respectful submission, the existing large-scale retail uses on the Site should be specifically recognized in Official Plan policies as employment generators contributing to the proposed OPA No. 144 direction of "no net loss of non-residential gross floor area".
6. The purpose of the intended new planning regime is to facilitate a change in land use to implement a mixed use vision, over the long-term. However, our concern is that this intended policy direction will be applied to the Site every time the Owner seeks to expand existing site uses, or through a development approval process involving a minor variance, consent or rezoning, or even under existing as-of-right zoning permissions in which site plan approval (at most) is required. We expect the City would take the position that any changes which are considered by staff to have the effect of delaying the time line of implementing the new vision proposed in the Staff Report would be resisted. In our view, the risk of such potential adverse consequences requires modification in order to confirm and ensure that the clear direction that the purpose of the new regime is not to undermine existing rights, but rather to provide additional intensification opportunities.

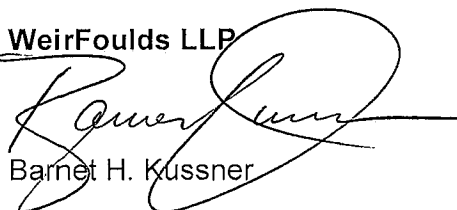
7. Site and Area Specific Policy 358 establishes certain criteria before the mixed-use vision becomes a reality. In our view, existing large scale, stand-alone retail stores and/or "power centres" ought to be exempt from the criteria.
8. The City is proposing to retain the Employment Industrial zone under the HCZBL, which we have indicated (in our Notice of Appeal of the HCZBL) that our client cannot support. A copy of our client's appeal letter is also attached.

Please note that Paul Chronis, Senior Planner of our office, will likely be in attendance at the Public Meeting to further address these issues and concerns. Accordingly, we would ask that this be so noted on the Agenda.

Thank you for your attention to this matter. Should you have any questions or require clarification, please contact Paul Chronis, Senior Planner in our office, at (416) 947-5069.

Yours truly,

**WeirFoulds LLP**



Barnet H. Kussner

BHK/cl

cc: Paul Bain, Project Manager, Community Planning, City of Toronto (Etobicoke York)  
Dung Lam, Starbank Developments (1678) Corp.  
Robert Kligerman, Kligerman Law Firm Professional Corporation  
Toronto Stock Yards Land Development Board  
Paul Chronis, WeirFoulds LLP

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CITY CLERK'S OFFICE  
SECRETARIAT SECTION

September 30, 2010

2010 SEP 30 P 2: 39

Barnet H. Kussner  
T: 416-947-5079  
bkussner@weirfoulds.com

DELIVERED

File 13703.00004

**Merle MacDonald**  
**Committee Administrator**  
**Planning & Growth Management Committee**  
**City of Toronto**  
Toronto City Hall, 10<sup>th</sup> Floor, West Tower  
100 Queen Street West  
Toronto, ON M5H 2N2

Dear Ms. MacDonald:

**Re: Notice of Appeal of City of Toronto Zoning By-law No. 1156-2010**  
**Starbank Development Corporation and**  
**Toronto Stock Yards Land Development Board**  
**2133 St. Clair Avenue West, City of Toronto**

We are counsel for Starbank Development Corporation ("**Starbank**"), which has a long-term leasehold interest in the property located at 2133 St. Clair Avenue West (the "**Site**"), in the City of Toronto (the "**City**"). We are also counsel for Toronto Stock Yards Land Development Board (the "**TSYLDB**"), owner of the Site.

We are in receipt of the City's "Notice of Passing of Zoning By-law No. 1156-2010" dated September 10, 2010. As a City-wide by-law, Zoning By-law No. 1156-2010 (the "**HCZBL**") has the effect of regulating the use of all lands within the geographic boundaries of the amalgamated City of Toronto except as otherwise specified. As far as the Site is concerned, a majority portion of the lands is proposed to be excluded from the HCZBL; while the balance is proposed to be zoned as an "Employment-Industrial" Zone.

Prior to the passing of the HCZBL, both Starbank and TSYLDB participated in the City's deliberations in several respects. By letters dated June 8 and August 18, 2010 (copies attached), we provided written submissions to the City expressing our concerns on behalf of both clients. We also made an oral deputation on Starbank's behalf at the Planning and Growth Management Committee meeting held on August 19, 2010. In addition, we attended the Public Open House meeting on August 11, 2010 to monitor the progress of the HCZBL on behalf of our clients. It remains our submission, and our clients continue to request, that the entire Site be excluded from the provisions of the HCZBL for the reasons detailed below.

We have reviewed the enacted version of the HCZBL with our clients who remain concerned that a portion of the Site continues to be placed within an Employment-Industrial (E) Zone. On this basis, we have been instructed to appeal the HCZBL to the Ontario Municipal Board (the "Board"). In accordance with the provisions of Section 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, kindly accept this correspondence as the Notice of Appeal of both Starbank and TSYLDB objecting to the HCZBL.

The reasons for our clients' objections and the grounds for appeal have been set out in our previous written submission (attached) and oral deputation. Those reasons can be summarized as follows:

- (1) From the standpoint of appropriate land use planning, there is no valid basis to exclude the entire Site from the provisions of the HCZBL and, in effect, thereby render the Site subject to split zoning. The use of the Site has co-existed harmoniously with the surrounding community fabric and has developed in accordance with all City planning expectations as expressed in the Official Plan, Zoning By-law and approved site plan agreement(s). While the area is under an active planning review, it is beyond reason for a small portion of the Site to remain in the Employment-Industrial (E) Zone.
- (2) At present, the portion of the Site that remains subject to the HCZBL is not correctly recognized in terms of its existing built-form. Issues such as density calculation as well as the restrictive definition of "gross floor area" that would apply under the Employment-Industrial (E) Zone create conflict, uncertainty and unintended planning consequences. This outcome is neither appropriate nor desirable from a good planning perspective.
- (3) The City is in the process of finalizing the St. Clair Avenue West Land Use Study (the "Land Use Study"). The Land Use Study is proposed to be brought forward for Council's consideration early in the new year. Once the Land Use Study is adopted, it is intended that the City's Official Plan will be amended and the zoning for the Site will be changed to reflect the findings of the Land Use Study.
- (4) Such further and other grounds as counsel may advise and the Board may deem just.

In satisfaction of the Board's processing requirements, please find attached the following:

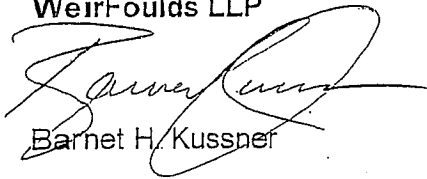
- (1) Completed Board Form entitled "Appellant Form (A1) – Planning Act"; and,
- (2) Our firm's cheque in the amount of \$125.00 representing the Board's processing fee of our clients' zoning appeal herein.

Please acknowledge receipt of this correspondence and arrange to have the file forwarded to the Board at your earliest opportunity.

Thank you for your attention to this matter. Should you have any questions, please contact the undersigned or Paul Chronis of our office at 416-947-5069.

Yours truly,

**WeirFoulds LLP**



Barnett H. Kussner

BHK:PC:d  
Encl.

cc: Dung Lam, Starbank Developments 1860 Corp.  
Rick Goodman, Toronto Stock Yards Land Development Board  
Robert Kligerman, Kligerman Law Firm Professional Corporation  
Paul Chronis, WeirFoulds LLP  
Lisa Borsook, WeirFoulds LLP

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Environment and Land Tribunals Ontario  
**Ontario Municipal Board**  
 655 Bay Street, Suite 1500 Toronto, Ontario M5G 1E5  
 TEL: (416) 212-6349 or Toll Free: 1-866-448-2248  
 FAX: (416) 326-5370  
 www.elto.gov.on.ca

**APPELLANT FORM (A1)  
 PLANNING ACT**

**SUBMIT COMPLETED FORM  
 TO MUNICIPALITY/APPROVAL AUTHORITY**

Date Stamp - Appeal Received by Municipality

Receipt Number (OMB Office Use Only)

**Part 1: Appeal Type (Please check only one box)**

SUBJECT OF APPEAL	TYPE OF APPEAL	PLANNING ACT REFERENCE (SECTION)
Minor Variance	<input type="checkbox"/> Appeal a decision	45(12)
Consent/Severance	<input type="checkbox"/> Appeal a decision	53(19)
	<input type="checkbox"/> Appeal conditions imposed	
	<input type="checkbox"/> Appeal changed conditions	53(27)
	<input type="checkbox"/> Failed to make a decision on the application within 90 days	53(14)
Zoning By-law or Zoning By-law Amendment	<input checked="" type="checkbox"/> Appeal the passing of a Zoning By-law	34(19)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days	34(11)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality	
Interim Control By-law	<input type="checkbox"/> Appeal the passing of an Interim Control By-law	38(4)
Official Plan or Official Plan Amendment	<input type="checkbox"/> Appeal a decision	17(24) or 17(36)
	<input type="checkbox"/> Failed to make a decision on the plan within 180 days	17(40)
	<input type="checkbox"/> Application for an amendment to the Official Plan – failed to make a decision on the application within 180 days	22(7)
	<input type="checkbox"/> Application for an amendment to the Official Plan – refused by the municipality	
Plan of Subdivision	<input type="checkbox"/> Appeal a decision	51(39)
	<input type="checkbox"/> Appeal conditions imposed	51(43) or 51(48)
	<input type="checkbox"/> Failed to make a decision on the application within 180 days	51(34)

**Part 2: Location Information**

2133 St. Clair Avenue West

Address and/or Legal Description of property subject to the appeal:  
 Toronto

Municipality/Upper tier: \_\_\_\_\_



**Part 3: Appellant Information**

(Refer to Schedule "A" attached")

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)

Professional Title (if applicable): \_\_\_\_\_

E-mail Address: \_\_\_\_\_  
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: \_\_\_\_\_ Alternate Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
Street Address Apt/Suite/Unit# City/Town

Province Country (if not Canada) Postal Code

Signature of Appellant: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature not required if the appeal is submitted by a law office.)

Please note: You must notify the Ontario Municipal Board of any change of address or telephone number in writing. Please quote your OMB Reference Number(s) after they have been assigned.

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.

**Part 4: Representative Information (if applicable)**

I hereby authorize the named company and/or individual(s) to represent me:

Barnet Kussner

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Company Name: WeirFoulds LLP

Professional Title: Lawyer


E-mail Address: bkussner@weirfoulds.com  
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 416-947-5079 Alternate Telephone #: \_\_\_\_\_  
416-365-1876

Fax #: \_\_\_\_\_

Mailing Address: 130 King Street West Suite 1600 Toronto  
Street Address Apt/Suite/Unit# City/Town  
Ontario M5X 1J5

Province Country (if not Canada) Postal Code

Signature of Appellant:  Date: September 30, 2010

Please note: If you are representing the appellant and are NOT a solicitor, please confirm that you have written authorization, as required by the Board's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

**Part 5: Language and Accessibility**

Please choose preferred language:  English  French

We are committed to providing services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible.

**Part 6: Appeal Specific Information**

1. Provide specific information about what you are appealing. For example: Municipal File Number(s), By-law Number(s), Official Plan Number(s) or Subdivision Number(s):

(Please print)

City of Toronto Zoning By-law No. 1156-2010

2. Outline the nature of your appeal and the reasons for your appeal. Be specific and provide land-use planning reasons (for example: the specific provisions, sections and/or policies of the Official Plan or By-law which are the subject of your appeal - if applicable). \*\*If more space is required, please continue in Part 9 or attach a separate page.

(Please print)

Refer to the attached Notice of Appeal dated September 30, 2010

**THE FOLLOWING SECTIONS (a&b) APPLY ONLY TO APPEALS OF ZONING BY-LAW AMENDMENTS UNDER SECTION 34(11) OF THE PLANNING ACT.**

a) DATE APPLICATION SUBMITTED TO MUNICIPALITY: \_\_\_\_\_  
(If application submitted before January 1, 2007 please use the O1 'pre-Bill 51' form.)

b) Provide a brief explanatory note regarding the proposal, which includes the existing zoning category, desired zoning category, the purpose of the desired zoning by-law change, and a description of the lands under appeal:  
\*\*If more space is required, please continue in Part 9 or attach a separate page.

[Empty box for explanatory note]

**Part 7: Related Matters (if known)**

Are there other appeals not yet filed with the Municipality?

YES  NO

Are there other planning matters related to this appeal?

YES  NO

(For example: A consent application connected to a variance application)

If yes, please provide OMB Reference Number(s) and/or Municipal File Number(s) in the box below.

(Please print)

[Empty box for OMB Reference Number(s) and/or Municipal File Number(s)]

**Part 8: Scheduling Information**

How many days do you estimate are needed for hearing this appeal?  half day  1 day  2 days  3 days  
 4 days  1 week  More than 1 week – please specify number of days: \_\_\_\_\_

How many expert witnesses and other witnesses do you expect to have at the hearing providing evidence/testimony?  
One (possibly more)

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.):  
Planning (possibly others)

Do you believe this matter would benefit from mediation? YES  NO   
(Mediation is generally scheduled only when all parties agree to participate)

Do you believe this matter would benefit from a prehearing conference? YES  NO   
(Prehearing conferences are generally not scheduled for variances or consents)  
Possible multiple appeals by various parties

If yes, why? \_\_\_\_\_

**Part 9: Other Applicable Information \*\*Attach a separate page if more space is required.**

Refer to the attached Notice of Appeal dated September 30, 2010

**Part 10: Required Fee**

Total Fee Submitted: \$ 125.00

Payment Method:  Certified cheque  Money Order  Solicitor's general or trust account cheque

- The payment must be in Canadian funds, payable to the Minister of Finance.
- Do not send cash.
- PLEASE ATTACH THE CERTIFIED CHEQUE/MONEY ORDER TO THE FRONT OF THIS FORM.

SCHEDULE "A"

PART 3: APPELLANT INFORMATION

- 1 Starbank Development Corporation  
329 Brooke Avenue  
Toronto, Ontario M5M 2L4

Attention: Dung Lam

Tel: (416) 922-2222

Fax: (416) 782-1911

E-Mail: starbank@rogers.com

2. Toronto Stock Yards Land Development Board  
690 Dorval Drive, Suite 402  
Oakville, Ontario L6K 3W7

Attention: Rick Goodman

Tel: 905-815-0840

E-Mail: rick.goodman@merlingeneral.ca

August 18, 2010

Barnet H. Kussner  
T: 416-947-5079  
bkussner@weirfoulds.com

VIA E-MAIL & REGULAR MAIL

File 13073.00004

Chairman and Members  
Planning and Growth Management Committee  
City of Toronto  
City Hall, 10<sup>th</sup> Floor West, West Tower  
Toronto, Ontario M5H 2N2

Attention: Ms. Merle MacDonald  
Committee Administrator, City Clerk's Department

Dear Ms. MacDonald:

Re: Proposed "Harmonized" Comprehensive Zoning By-law  
2133 St. Clair Avenue West, City of Toronto

As you are aware, we are solicitors for Starbank Developments (1678) Corp. ("Starbank"), which has a long-term leasehold interest in the property located at 2133 St. Clair Avenue West (the "Site"), in the City of Toronto (the "City"). The Site is owned by Toronto Stock Yards Land Development Board.

Further to our submission letter dated June 9, 2010, we have now reviewed the July 19, 2010 draft version (Version 5) of the City's "Harmonized" Comprehensive Zoning By-law ("HCZBL") for the purpose of ensuring that the proposed zoning for the Site accurately reflects its current uses and existing permissions.

In accordance with Version 5 of the HCZBL, we understand that while the front portion of the Site fronting on St. Clair Avenue West is proposed to be shown in "black" indicating that it is "Not Part of this By-Law", the balance of the Site is to remain in the Employment-Industrial zone category. We have concerns with this approach for the following reasons:

1. The Site has been fully developed as one commercial development consisting of multiple commercial buildings functioning as a large scale, stand-alone retail stores ("power centre"). It is our submission that the current proposed Employment-Industrial zoning for the majority of the Site does not accurately reflect and recognize the existing development.

2. The restrictive nature of the range of as-of-right and conditional uses, which are proposed to be permitted on that portion of the Site to remain in the Employment-Industrial Zone, is inappropriate. The Site's current zoning does not fully comply with the City's new Official Plan.

In accordance with the transition protocol set out in the final Staff Report dated August 5, 2010, properties that are subject to an active site plan application or where the current zoning does not comply with the Official Plan are to be excluded from the HCZBL. As previously advised in our submission letter dated June 9, 2010, the Site has an active site plan control application (No. 09103791 WET IISA) seeking permission to increase the Site's commercial retail density on an as-of-right basis. Accordingly, it is our submission that the entire Site should be left out of the HCZBL until such time as the site plan approval process is complete. In actual fact, the Site should be included in Attachment 9 of the August 5, 2010 Staff Report (Current Site Plan Applications Shown as "Not Part of this By-law").

Moreover, we understand that the City is in the process of finalizing the St. Clair Avenue Avenue Study which will be subject to Council's consideration in the early 2011. In our view, it is therefore appropriate that the entire Site be excluded from the HCZBL.

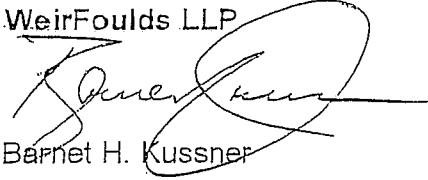
Kindly accept this correspondence as our clients written comments filed prior to Council enacting the HCZBL for the purposes of registering the Site's zoning recognition and reserving our client's *Planning Act* appeal rights, if necessary. We reserve the right to further supplement our concern as the HCZBL evolves, especially since we are not aware what further minor or major amendments (and to which provisions of the HCZBL) may be made by Staff and Council which could have zoning impacts on our client's property.

Kindly also accept this correspondence as our formal request that we be provided with any Staff Reports, Council and/or Committee's resolutions, and Notice of Decision by the City under s. 34(18) of the *Planning Act* with respect to the HCZBL.

Thank you for your attention to this matter. Should you have any questions or require clarification, please contact Paul Chronis, Senior Planner in our office, at (416) 947-5069.

Yours truly,

WeirFoulds LLP



Barnet H. Kussner

BHK:PC:cl

cc: Ian Graham, Acting Project Manager, Zoning By-law and Environmental Planning  
Klaus Lehmann, Acting Manager, Zoning By-law and Environmental Planning  
Paul Bain, City of Toronto Planning  
Dung Lam, Starbank Developments (1678) Corp.  
Rick Goodman, Toronto Stock Yards Land Development Board  
Paul Chronis, WeirFoulds LLP

2816225.1

August 18, 2010

Barnet H. Kussner  
T: 416-947-5079  
bkussner@weirfoulds.com

VIA E-MAIL AND REGULAR MAIL

File 01861.14227

**Merle MacDonald**  
Administrator, Planning & Growth Management Committee  
City of Toronto  
Toronto City Hall  
100 Queen Street West  
10th Floor, West Tower  
Toronto, Ontario M5H 2N2

Dear Ms. MacDonald:

**Re: Proposed "Harmonized" Comprehensive Zoning By-law  
Toronto Stock Yards Land Development Board**

We are solicitors for the Toronto Stock Yards Land Development Board ("TSY"), owner of properties in the vicinity of the Keele-St. Clair area bounded by Keele Street to the east, West Toronto Street to the south, and St. Clair Avenue to the north (the "Site"). As such, our client has an ongoing interest in the processing of the new proposed "Harmonized" Comprehensive Zoning By-law ("HCZBL") by the City.

As the City is aware, while the Site is designated Employment Area in the City's Official Plan, it has developed into a large scale, stand-alone retail stores (power centre) including lands municipally known as 2133 St. Clair Avenue West (the "**Starbank property**") which is under a long term lease with Starbank Development Corporation ("**Starbank**"), for which we also act. In effect, the current zoning of the Site and the built-form pre-dated the Official Plan "Employment" designation.

We have reviewed the July 19, 2010 version (Version 5) of the HCZBL for the purpose of ensuring that the proposed zoning for the Site accurately reflects its current uses and existing permissions. We understand that the majority of the Site continues to be shown in "black" indicating that it is "Not Part of this By-law". We are content with this approach so long as this zoning designation applies to the entire Site.

Insofar as the Starbank property is concerned, while the front portion of this property is proposed to be shown in "black", the balance of the lands is proposed to remain in the Employment-Industrial Zone under Version 5 of the HCZBL. We understand Starbank has



made previous submissions to the City on the Starbank property. TSY supports Starbank's concern that the HCZBL should grandfather or otherwise recognize and protect any previously approved and existing developments.

Moreover, we understand that the Starbank property has a current site plan control application (No. 09103791 WET IISA) in the City seeking permission to increase the Starbank property's commercial retail density on an as-of-right basis. In accordance with the transition protocol set out in the Staff Report dated August 5, 2010, it is our client's request that the Site, including the entire Starbank property, be excluded from the HCZBL.

Recently, we received e-mail correspondence from the City indicating that it is in the process of finalizing the St. Clair Avenue West Land Use Study (the "**Land Use Study**"). The Land Use Study is proposed to be brought forward for Council's consideration early in the new year. Once the Land Use Study is adopted, it is intended that the City's Official Plan will be amended and the zoning for the Site will be changed to reflect the findings of the Land Use Study. Our client will be separately participating in that process. Nevertheless, to the extent that the HCZBL may be amended to implement the Land Use Study, TSY continues to have an interest in the HCZBL for this purpose.

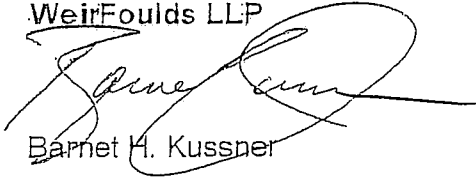
Kindly accept this correspondence as TSY's written comments filed prior to Council enacting the HCZBL for the purposes of registering the Site's zoning recognition and reserving its *Planning Act* appeal rights, if necessary. TSY reserves the right to further supplement its concern as the HCZBL evolves, especially since we are not aware what further minor or major amendments (and to which provisions of the HCZBL) may be made by Staff and Council which could have zoning impacts on the Site.

Kindly also accept this correspondence as our formal request that we be provided with any Staff Reports, Council and/or Committee's resolutions, and Notice of Decision by the City under s. 34(18) of the *Planning Act* with respect to the HCZBL.

Thank you for your attention to this matter. Should you have any questions or require clarification, please contact Paul Chronis, Senior Planner in our office, at (416) 947-5069.

Yours truly,

WeirFoulds LLP



Barnett H. Kussner

BHK:PC:cl

cc: Ian Graham, Acting Project Manager, Zoning By-law and Environmental Planning  
Klaus Lehmann, Acting Manager, Zoning By-law and Environmental Planning  
Rick Goodman, Toronto Stock Yards Land Development Board  
Dung Lam, Starbank Development Corporation  
Robert Kligerman, Kligerman Law Firm  
Lisa Borsook, WeirFoulds LLP  
Paul Chronis, WeirFoulds LLP

2814611.1

June 9, 2010

Barnet H. Kussner  
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VIA E-MAIL & REGULAR MAIL

File 13703.00004

Chairman and Members  
Planning and Growth Management Committee  
City of Toronto  
City Hall, 10<sup>th</sup> Floor West, West Tower  
Toronto, Ontario M5H 2N2

Attention: Ms. Merle MacDonald  
Committee Administrator, City Clerk's Department

Dear Ms. MacDonald:

Re: Proposed "Harmonized" Comprehensive Zoning By-law  
2133 St. Clair Avenue West, City of Toronto

We are solicitors for Starbank Developments (1678) Corp. ("Starbank"), which has a long-term leasehold interest in the property located at 2133 St. Clair Avenue West (the "Site"), in the City of Toronto (the "City"). The Site has a current active site plan control application (No. 09103791 WET IISA) seeking permission to increase the Site's commercial retail density on an as-of-right basis. As such, our client has an ongoing interest in the processing of the new proposed "Harmonized" Comprehensive Zoning By-law ("HCZBL") by the City.

We have reviewed the May 27, 2010 version of the HCZBL for the purpose of ensuring that the proposed zoning for the Site accurately reflects its current uses and existing permissions. The Site is proposed to be shown in "black" indicating that it is "Not Part of this By-Law". We are content with this approach so long as this zoning designation applies to the Site.

However, should the Site's proposed zoning change which we expect it will be once the ongoing St. Clair Avenue Avenue Study has been finalized and approved by Council, we reserve the right to make further submissions generally in respect of the following matters, if and when they may become applicable:

1. The current draft HCZBL does not propose to "grandfather" or otherwise recognize and protect any previously approved minor variances. In our opinion, any carry-forward of site-specific exemptions should include any approved minor variance.

2. The restrictive nature of the range of as-of-right and conditional uses proposed to be permitted on the Site under the current draft HCZBL.
3. Issues arising out of the implementation of the St. Clair Avenue Avenue Study that may affect the Site. While the Study may be supporting increased intensification along the St. Clair frontage, the existing commercial development rights will require recognition and protection, inclusive of existing access arrangements.

We understand Staff are continuously updating the HCZBL to respond, where appropriate, to the comments, concerns and submissions filed by interested parties. The purpose of this correspondence is to register our client's concerns with the HCZBL as they relate to the Sites.

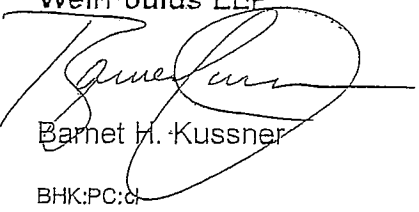
Kindly accept this correspondence as our clients written comments filed prior to Council enacting the HCZBL for the purposes of registering the Site's zoning recognition and reserving our client's *Planning Act* appeal rights, if necessary. We reserve the right to further supplement our concern as the HCZBL evolves, especially since we are not aware what further minor or major amendments (and to which provisions of the HCZBL) may be made by Staff and Council which could have zoning impacts on our client's property.

Kindly also accept this correspondence as our formal request that we be provided with any Staff Reports, Council and/or Committee's resolutions, and Notice of Decision by the City under s. 34(18) of the *Planning Act* with respect to the HCZBL.

Thank you for your attention to this matter. Should you have any questions or require clarification, please contact Paul Chronis, Senior Planner in our office, at (416) 947-5069.

Yours truly,

WeirFoulds LLP



Barnett H. Kussner

BHK:PC:d

cc: Joseph D'Abramo, Acting Director, Zoning By-law and Environmental Planning, City of Toronto  
Paul Bain, City of Toronto Planning  
Dung Lam, Starbank Developments (1678) Corp.  
Paul Chronis, WeirFoulds LLP